

KK2/mmt/372357

2246-42-75-681

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

NEW CENTURY MORTGAGE)	
CORP.,)	
)	Case No.: 05 C 2370
Plaintiff,)	
)	Judge Coar
v.)	
)	
GREAT NORTHERN INSURANCE)	
COMPANY, FEDERAL)	
INSURANCE COMPANY,)	
)	
Defendants.)	

**DEFENDANTS' GREAT NORTHERN INSURANCE COMPANY'S AND FEDERAL
INSURANCE COMPANY'S RESPONSE TO PLAINTIFF'S MOTION TO FILE
SUPPLEMENTAL AUTHORITY**

NOW COME the Defendants, GREAT NORTHERN INSURANCE COMPANY ("Great Northern") and FEDERAL INSURANCE COMPANY ("Federal") by and through their attorneys, TRESSLER, SODERSTROM, MALONEY & PRIESS, and in Response to Plaintiff's Motion to File Supplemental Authority In Opposition to Defendants' Motion for Summary Judgment and in Support of its Motion for Summary Judgment, state as follows:

1. The supplemental authority cited by plaintiff, Hooters of Augusta, Inc. v. American Global Insurance Company, No. 04-11077, 2005 U.S. dist. LEXIS 26765 (11th Cir. Dec. 6, 2005) involves Georgia law rather than Illinois law.

2. The analytical approach employed by the 11th Circuit in Hooters of Augusta was rejected by the Seventh Circuit in American States Insurance Company v. Capital Associates of Jackson County, 392 F.3d 939, 943 (7th Cir. 2004) and by the Honorable Judge Robert J. Gettleman in St. Paul Fire and Marine Insurance Company v. Brunswick Corporation and

Brunswick Bowling & Billiards Corporation, Case No. 04 C 7751 (United States District Court for the Northern District of Illinois, November 22, 2005).

3. The instant case also involves several critical defenses that are not addressed in the Hooters of Augusta decision. For example, the insurers have asserted the following additional defenses: (a) plaintiff has not asserted a viable cause of action, (b) the Prior Publication Exclusion bars coverage, (c) the plaintiff has failed to meet its burden of proving that an offense occurred during the relevant policy period, (d) plaintiffs are not entitled to coverage for their donations to charity totaling roughly \$1 million, and (e) the underlying settlement does not arise out of an "occurrence".

WHEREFORE, Defendants GREAT NORTHERN INSURANCE COMPANY and FEDERAL INSURANCE COMPANY, respectfully contend that the case styled Hooter of Augusta, Inc. v. American Global Insurance Company, No. 04-11077, 2005 U.S. dist. LEXIS 26765 (11th Cir. Dec. 6, 2005) does not provide persuasive authority regarding resolution of the motions currently pending before this Court.

GREAT NORTHERN INSURANCE
COMPANY AND FEDERAL
INSURANCE COMPANY

By: *s/Daniel J. Cunningham*

One of Their Attorneys

Daniel J. Cunningham
Kathy Karaboyas Malamis
TRESSLER, SODERSTROM, MALONEY & PRIESS
Sears Tower, 22nd Floor
233 South Wacker Drive
Chicago, Illinois 60606-6399
(312) 627-4000

KK2/kbr/372366

2246-42-75-681

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

NEW CENTURY MORTGAGE)	Case No.: 05 C 2370
CORP.,)	
)	
Plaintiff,)	Judge: Coar
)	
v.)	
)	
GREAT NORTHERN INSURANCE)	
COMPANY, FEDERAL)	
INSURANCE COMPANY,)	
)	
Defendants.)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2005, I electronically filed Defendants, Great Northern Insurance Company's and Federal Insurance Company's Response to Plaintiff's Motion to File Supplemental Authority with the Clerk of the Court using CM/ECF System which will send notification of such filing(s) to the following:

Bart T. Murphy
Wildman, Harrold, Allen & Dixon
2300 Cabot Drive – Suite 455
Lisle, IL 60532

David A. Gauntlett
Eric R. Little
Gauntlett & Associates
18400 Von Karman – Suite 300
Irvine, CA 92612

GREAT NORTHERN INSURANCE COMPANY

By: /s/ *Kathy Karaboyas Malamis*

One of Its Attorneys

Daniel J. Cunningham
Kathy Karaboyas Malamis
TRESSLER, SODERSTROM, MALONEY & PRIESS
Sears Tower, 22nd Floor
233 South Wacker Drive
Chicago, Illinois 60606-6399
(312) 627-4000